

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM M. COX,

No. C 07-1661 CW

Plaintiff,

ORDER DENYING REQUEST TO
PROCEED IN FORMA PAUPERIS
AND DISMISSING COMPLAINT

v.

JOSE VEGA; MICHELLE ZHAO; LAWRENCE
AV; HOLLY WEH; EDWIN BALLESTEROS;
and PAUL LAW,

Defendants.

On March 22, 2007, Plaintiff William M. Cox filed his complaint and request for leave to proceed in forma pauperis (IFP) pursuant to 28 U.S.C. § 1915(a). On March 26, 2007, the Court issued an Order Dismissing Action with Leave to Amend (March 26 Order). In the March 26 Order, the Court explained that Plaintiff had failed to allege any basis for federal jurisdiction over his complaint and failed to include a demand for judgment for the relief he sought. The Court dismissed the complaint with leave to amend no later than April 27, 2007. On March 30, 2007, Plaintiff filed a first amended complaint (FAC). In his FAC, Plaintiff attempted to state claims for violations of his rights under the First and Fourth Amendments by five individuals who were staff at Mission Creek Housing, where Plaintiff lived. On June 7, 2007, the Court issued an Order Denying Request to Proceed In Forma Pauperis And Dismissing Complaint With Leave to Amend (June 7 Order). In

1 the June 7 Order, the Court explained that Plaintiff's allegations
2 were insufficient to state constitutional claims because he had
3 failed to assert factual allegations that the State exercised any
4 power or influence over the individuals named in Plaintiff's FAC to
5 cause them to violate Plaintiff's constitutional rights. The Court
6 also explained that Plaintiff's allegations were insufficient to
7 establish that these individuals committed a constitutional
8 violation. In regard to the First Amendment claim, the Court
9 stated that it appeared that Plaintiff "alleges that he was
10 criticized for requesting an African American representative.
11 Plaintiff does not indicate who criticized him or how he was
12 criticized or whether he was retaliated against for making this
13 statement or how his speech was chilled." In regard to the Fourth
14 Amendment claim, the Court stated that Plaintiff alleges that
15 "someone came into his apartment without his knowledge and took his
16 federal legal papers. However, he does not indicate who came into
17 his room to take his legal papers and how this individual or
18 individuals acted under state law." The Court also stated that
19 Plaintiff attempted to allege that his civil rights under §§ 441
20 and 443 were violated, but did not identify under which title of
21 the United States Code these statutes fall. The Court failed to
22 find any such statute that would apply to Plaintiff's allegations.

23 In the June 7 Order, the Court gave Plaintiff the following
24 instructions: (1) name as a Defendant each individual who violated
25 his rights and specify how each Defendant acted under color of
26 state law and the actions of each Defendant that violated his
27 rights; (2) identify what title §§ 441 and 443 fall under and how

1 each Defendant violated the rights provided by these statutes.

2 Plaintiff has timely filed a Second Amended Complaint (SAC).
3 He has named six individuals as Defendants. However, in all other
4 respects, Plaintiff has failed to follow the Court's instructions.
5 In the SAC, Plaintiff alleges facts such as, "Jose Vega, Michelle
6 Zhao, Lawrence Av, Holly Weh, Edwin Ballesteros . . . have been in
7 my apartment #402 maybe #10 times, also every time I go to a
8 hospital in SF Saint Francis, there nothing wrong with me [sic]."
9 Plaintiff alleges that Saint Francis Hospital does not tell him the
10 truth about his medical condition. He also alleges that there is a
11 toxic smell in his apartment, but "they" never test the air.

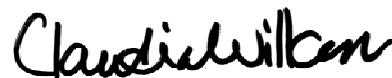
12 These allegations fail to respond to the instructions given in
13 the Court's June 7 Order regarding how to remedy the deficiencies
14 in his FAC.

15 Because this is the third time the Court has dismissed this
16 complaint, the dismissal is without leave to amend. However,
17 dismissal is without prejudice to filing in a paid complaint.

18 IT IS SO ORDERED.

19 7/30/07

20 Dated: _____



21 CLAUDIA WILKEN
22 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

COX et al,

Plaintiff,

v.

STAFF AT MISSION CREEK HOUSING et al,

Defendant.

Case Number: CV07-01661 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 30, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

William M. Cox
225 Berry Street # 402
San Francisco, CA 94158

Dated: July 30, 2007

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California